

MAINTENANCE AND LIABILITY AGREEMENT

B E T W E E N:

THE CORPORATION OF THE CITY OF KAWARTHA LAKES

(the "City")

- and -

THE HICKORY BEACH DOCK OWNERS ASSOCIATION

(the "Association")

WHEREAS:

- A. The City is a municipal corporation, incorporated pursuant to the provisions of the Municipal Act, 2001, S.O. 2001, c.25;
- B. The City is the registered owner of lands legally described as Part of Lot 13, Concession 2, shown as Park on Plan 153; in the former Geographic Township of Verulam, City of Kawartha Lakes, being all of PIN 63125-0326 (LT) on which sits a park, natural beach area (no imported sands), approximately 50 docks, and a concrete staircase (the "Property"). The Property receives no sanitary or water servicing. The Property is not currently serviced by hydroelectricity;
- C. The Association is a not-for-profit corporation incorporated in Ontario under the Ontario *Not-for-Profit Corporations Act, 2010*, S.O. 2010, c. 15 as Business # 78089-6882 and incorporation number 10532894;
- D. The Association wishes to manage the Property for use by its members; and
- E. The City is desirous that the Association manage the property so as to reduce the tax burden (on the residents of the City of Kawartha Lakes as a whole) associated with the maintenance of this Property;

Now therefore, in consideration for the benefits conferred to each party to this Agreement (collectively, the "Parties") as specified in paragraphs (d) and (e) above, the parties agree as follows:

1. **USE:** The Property shall be used only for not-for-profit recreational and leisure activities. Excluding docks and staircases, no structure requiring a building permit shall be built on the Property without the consent of the City. The Association has full and exclusive authority to regulate the addition, removal and repair of all docks and staircases on the property. There shall be no consumption of alcohol on the premises. All use must comply with all City By-laws as well as provincial and federal legislation, as may be added or amended throughout the Term of the Agreement.
2. **TERM:**
 - a. The Agreement shall be for a term of 5 years, commencing on the 1st day of April, 2017, and terminating on the 31st day of March, 2022.
 - b. Provided the Association is not at any time in default of any covenants within the Agreement, the Association shall be entitled to renew this Agreement for 4 additional terms of 5 years each on written notice to the City given not less than 4 months prior to the expiry of the current term on the same terms. Renewal will issue only on the consent of the City.
3. **STATE OF THE PROPERTY:** The Association accepts the Property on an “as is” basis.
4. **ASSOCIATION’S RESPONSIBILITIES:**
 - a. Maintenance of the Property: The Association shall, at its sole cost, manage, maintain, operate and repair the Property. This includes but is not limited to: garbage collection and removal, and grass cutting;
 - b. Obtain all permits as may be required by the Kawartha Region Conservation Authority (pursuant to the *Conservation Authorities Act*, R.S.O. 1990, c. C.27, and regulations thereto, both as amended), Building Code (pursuant to the Ontario *Building Code Act*, 1992, S.O. 1992, c.23, and regulations thereto, both as amended) and the Trent Severn Waterway; and
 - c. The Association shall insure the Property at its own cost.
5. **ASSOCIATION’S RIGHTS:**
 - a. The Association is entitled to charge fees for parking, boat docking or locating on a cost-recovery basis only. “Cost recovery” shall include actual costs of insurance and maintenance;
 - b. The Association is entitled to create and post park rules, provided the rules are in accordance with applicable legislation and the City has approved the signage;
 - b. The Association, as occupier of the Property, is entitled to exclude persons from being on the Property, pursuant to the *Trespass to Property Act*, R.S.O. 1990, c. T.21, if those persons are causing a nuisance/ disturbance to others, are in breach of any applicable by-law, including the City of Kawartha Lakes Noise By-law 2005-025, as amended, or appear to be engaged in activity contrary to provincial law (including, but not limited to, the *Smoke-Free*

Ontario Act, S.O. 1994, c. 10 and regulation thereto, both as amended) or federal law (including but not limited to, the Criminal Code).

6. **CITY'S RIGHTS AND RESPONSIBILITIES:** The City will have the continuing right and responsibility to enter and install capital projects on the Property throughout the duration of the Term, at its sole cost. The City will have the continuing right and responsibility to enter to inspect the Property throughout the duration of the Term.
7. **SCHEDULES:** Schedule "A", attached hereto, shall form an integral part of this Agreement.
8. **NOTICES:** Any notice required or contemplated by any provision of this Agreement shall be given in writing and addressed as follows:

For the City:

City of Kawartha Lakes
26 Francis St., P.O. Box 9000
Lindsay, Ontario K9V 5R8
Fax: 705-324-8110
Attention: Clerk's Department
Clerks@city.kawarthalakes.on.ca

For the Association:

39 Pleasant View Drive
Fenelon Falls, Ontario
K0M1N0

Either party may, at any time, notify the other of a change in contact information for service.

9. **SIGNAGE:** The Association may, at its own expense, erect signage in a good and workmanlike manner, subject to municipal by-laws and government regulations and subject to the City's written approval as to the design, colour, and content of any such signs, which approval shall not be unreasonably withheld.
10. **INSURANCE:**

The Association shall provide and maintain during the term of the Agreement, and any renewal thereof, the following insurance coverage:

- a. Commercial General Liability insurance including but not limited to bodily injury including death, property damage including loss of use thereof, personal injury, blanket contractual liability, sudden and accidental pollution coverage, products and completed operations liability, non-owned automobile liability, tenants legal liability and cross liability and severability of interest clause. The policy shall be in an amount no less than Five Million Dollars (\$5,000,000.00) per occurrence and with a deductible acceptable to the City. The policy shall name the Corporation of the City of Kawartha Lakes as an additional insured.

- b. All Risk Property insurance in an amount equal to the full replacement cost of property of every description and kind owned by the Association or for which the Association is legally responsible, and which is located on or about the Property, including anything in the nature of a leasehold improvement. The policy shall not allow subrogation claims by the Insurer against the City.
- c. The Association shall provide the City within 10 days of signing the Agreement and annually thereafter, a Certificate of Insurance. All policies shall be with insurers licensed to underwrite insurance in the Province of Ontario. The insurance shall be with insurers acceptable to the City and with policies in a form satisfactory to the City. All policies shall be endorsed to provide the City with not less than 30 days' written notice in advance of any cancellation, change or amendment restricting coverage. All premiums and deductibles under the insurance policies are the sole expense of the Association. All policies shall apply as primary and not as excess of any insurance available to the City. As determined by the City, the Association may be required to provide and maintain additional insurance coverage(s) or increased limits which are related to this Agreement.

11. **INDEMNITY AND LIMITATION OF LIABILITY:** The Association waives, releases, discharges, defends and indemnifies the City from and against any and all rights, claims, demands or actions whatsoever of every kind and nature, direct and indirect, or any person whether in respect of damage to person or property arising out of or occasioned by the maintenance, use or occupancy of the Property from any cause whatsoever, and including with respect to any design or feature of any capital item replaced or repaired by the Association. The Association agrees to look solely to its insurers in the event of loss. This term survives the Term of the Agreement.

a. **Environmental:** Without limiting the generality of the foregoing, the Association shall be, at its own expense, responsible for any loss, costs, damages, charges or expenses whatsoever which may be sustained by the City as a result of any environmental contamination, spill or hazard as may be created by the Association during its use of the Property. This Agreement shall constitute a Waiver on the part of the Association: The Association confirms that any environmental damage occurring as a result of its occupation of the Property shall be remedied upon the expiration of the Agreement at the sole cost of the Association.

12. **ACTS OF DEFAULT AND CITY'S REMEDIES:** An act of default has occurred when: the Association has breached any of its covenants, failed to perform any of its obligations under this Agreement, a construction lien is threatened or registered against the Property as a result of the Association's act or omission and the Association does not act swiftly to rectify the situation to the City's full satisfaction, or the Association fails to defend and indemnify the City as per section 10.

13. **ASSIGNMENT:** This Agreement shall not be assignable or otherwise transferable by the Association. The Association may not assign or transfer its interest in the Agreement

contemplated herein without securing the written consent from the City, which consent shall not be unreasonably withheld. This provision does not prevent the Association from contracting with third parties to carry out its maintenance obligations under this agreement.

a. If applicable, the transfer of the majority of the issued shares in the capital stock, or any transfer, issuance or division of shares of the corporation sufficient to transfer control of the corporation shall be deemed for all purposes to be an assignment within the meaning of this Agreement. This provision shall not apply to a corporation whose shares are listed and traded on any recognized public stock exchange in Canada or the United States.

- 14. **AMENDMENT:** Any amendment to this Agreement, with the exception of a change in contact details for notice as per section 7, shall take effect once reduced to writing and signed by both parties.
- 15. **TERMINATION UPON NOTICE AND AT END OF TERM:** Each party has the right to terminate this Agreement by giving 60 days prior written notice to the other party.
- 16. **AGREEMENT IN WRITING:** This Agreement, including any Schedule attached hereto, shall constitute the entire Agreement between the parties. There is no representation, warranty, collateral agreement or condition that affects this Agreement other than as expressed herein. This Agreement shall be read with all changes of gender or number required by the context.
- 17. **LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The Association acknowledges that any information provided by the City is not legal, accounting, tax or environmental advice. The Association is encouraged to obtain independent professional advice prior to signing this document.
- 18. **BINDING AGREEMENT:** This Agreement and the acceptance thereof shall constitute a binding agreement by the parties to enter into the agreement for the provision of maintenance and the assumption of liability for the Property and to abide by the terms and conditions herein contained.
- 19. **COPIES:** Copies of this Agreement will be treated as originals.
- 20. **ADMINISTRATION FEE:** The Association will pay the City \$625.00 upon the execution of this Agreement on a cost-recovery basis to reimburse the City for the administration of this Agreement for the 5 year Term.

For the Association:

SIGNED AND DELIVERED in
the presence of:

IN WITNESS whereof I have hereunto set my hand:

DATE:

(Witness)

(Association by Authorized

Representative signature)
Name (print)

DATE:

(Witness)

(Association by Authorized
Representative signature)

Name (print)

For the Corporation of the City of Kawartha Lakes:

IN WITNESS whereof I have
hereunto set my hand:

DATE:

Cathie Ritchie, Clerk

DATE:

Andy Letham, Mayor

“We are authorized to bind the Corporation of the City of Kawartha
Lakes pursuant to Council Resolution _____.”

SCHEDULE "A"

